

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

A&S SURPLUS, INC.,

Plaintiff,

v.

CITY OF LAKEWOOD; UNITED
STATES OF AMERICA; RUSSELL
MARTIN; PETER JOHNSON; KEN
HENSON; NATHAN ECHOLS; JERRY
COLEY; and JOHN DOES 1-8,

Defendants.

CASE NO. 14-5375-RJB

ORDER ON PLAINTIFFS MOTION
FOR RECONSIDERATION OF
ORDER ON CROSS MOTIONS FOR
SUMMARY JUDGMENT

This matter comes before the Court on Plaintiff's Motion for Reconsideration of Order on Cross Motions for Summary Judgment. Dkt. 97. The Court has considered the pleadings filed regarding the motion and the file herein.

This case arises from a joint operation carried out by the Criminal Investigation Command ('CID') and Military Police Investigations ('MPI') units of Joint Base Lewis McCord ('JBLM'), the Bureau of Alcohol, Tobacco, Firearms, and Explosives ('ATF'), and the City of Lakewood Police Department ('LPD') on June 3, 2013, to recover allegedly stolen government

property located at Plaintiff's military surplus store and warehouse. Dkt. 27. Plaintiff A&S Surplus, Inc. makes claims for violation of its Fourth Amendment rights pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971) and 42 U.S.C. § 1983 and for violations of state tort law. *Id.*

On May 29, 2015, this Court entered an order dismissing the constitutional claims asserted against the individual officers finding they were entitled to qualified immunity. Dkt. 92.

In its pending motion, Plaintiff moves for reconsideration of that order. Dkt. 97. For the reasons set forth below, that motion (Dkt. 97) should be denied.

The background facts and procedural history are in this Court's May 29, 2015 Order on Cross Motions for Summary Judgment (Dkt. 92, at 1-5) and are adopted here.

DISCUSSION

A. MOTION FOR RECONSIDERATION STANDARD

Western District of Washington Rule CR 7(h)(1) provides: "Motions for reconsideration are disfavored. The court will ordinarily deny such motions in the absence of a showing of manifest error in the prior ruling or a showing of new facts or legal authority which could not have been brought to its attention earlier with reasonable diligence."

B. PLAINTIFF'S MOTION

Plaintiff's motion (Dkt. 97) should be denied. Plaintiff has not shown a "manifest error in the prior ruling or a showing of new facts or legal authority which could not have been brought to its attention earlier with reasonable diligence." Plaintiff raises three issues which it requests the Court reconsider. They will be addressed as follows.

Plaintiff first argues that the Court improperly concluded that there was probable cause to search the Foxhole. Dkt. 97, at 2. It asserts that the Court made contradictory findings when it

1 found that there was probable cause to search the Foxhole for United States property wrongfully
2 held, but then found that probable cause did not exist for “all items of a particular type described
3 in the warrants.” Plaintiff’s motion for reconsideration on this issue should be denied. Plaintiff
4 appears to be conflating the Court’s findings on probable cause and particularity.

5 Plaintiff also argues “Dkt. 60-12, the warrant for the A&S Surplus warehouse, only has two
6 pages so that both the document and page numbers [cited in the order at Dkt. 92, at 9, lines 2-3]
7 require correction.” Dkt. 97, at 2. Despite Plaintiff’s assertions, the record indicates that Dkt. 60-
8 12, at 2-3, the citation in the Order (Dkt. 92, at 9), is the search warrant for the Foxhole. No
9 correction to the order is appropriate.

10 Plaintiff secondly argues that the Court erred when it found that the federal agents relied on
11 objective references in deciding what to seize. Dkt. 97, at 3-4. Plaintiff argues that the MPI
12 agents denied seeing or using the Demilitarization Codes and denied referring to the warrants, or
13 a document or a list as a reference during their search. *Id.* Plaintiff argues that the Lakewood
14 Officers testified that they did not see any of the federal agents referring to lists or any other
15 documents. *Id.* Plaintiff’s motion for reconsideration on this ground should be denied. The order
16 noted that the record indicates that the federal agents used a variety of sources to identify
17 government property. They called Central Issuance Facility employees to confirm whether an
18 item should be seized, some used documents on site, and they all used their own experience.
19 Even if some of the officers on site did not use manuals, Plaintiff makes no showing that
20 qualified immunity should not have been granted. Plaintiff’s remaining argument regarding the
21 officers’ decision to not seize certain items (or an alleged inconsistency in those decisions) also
22 does not provide a basis to reconsider the grant of qualified immunity.

1 The Plaintiff lastly argues that the Court should not have granted Echols and Martin qualified
 2 immunity because that decision “overlooks evidence showing that the magistrate failed to actually
 3 read the affidavits, thus wholly abandoning their role” and that the warrants were “patently invalid
 4 for lack of particularity” such that no reasonable officer could have believed that the warrants
 5 were valid. Dkt. 97, at 5. Plaintiff’s motion for reconsideration should be denied on this ground
 6 as well. While Plaintiff argues that errors in the warrants show that the issuing judge did not
 7 read the warrants before she signed them, Plaintiff has no evidence to support that assertion.
 8 Further, as stated in the Order, “[w]here the alleged Fourth Amendment violation involves a
 9 search or seizure pursuant to a warrant, the fact that a neutral magistrate has issued a warrant is
 10 the clearest indication that the officers acted in an objectively reasonable manner or, as we have
 11 sometimes put it, in objective good faith.” *Messerschmidt v. Millender*, 132 S. Ct. 1235, 1245
 12 (2012). Although there is an “exception allowing suit when ‘it is obvious that no reasonably
 13 competent officer would have concluded that a warrant should issue,’” *Id.*, there is no showing
 14 that the exception applies. Plaintiff’s motion for reconsideration (Dkt. 97) should be denied and
 15 the prior Order on Cross Motions for Summary Judgment (Dkt. 92) affirmed.

16 **ORDER**

17 For the foregoing reasons, the court finds that there are no material issues of fact to
 18 preclude the following findings and order. Therefore, it is hereby **ORDERED** that:

- 19 • Plaintiff’s Motion for Reconsideration of Order on Cross Motions for Summary
 20 Judgment (Dkt. 97) **IS DENIED**; and
- 21 • The May 29, 2015 Order on Cross Motions for Summary Judgment (Dkt. 92) **IS**
 22 **AFFIRMED**.

1 The Clerk is directed to send uncertified copies of this Order to all counsel of record and
2 to any party appearing *pro se* at said party's last known address.

3 Dated this 18th day of June, 2015.

4 

5 ROBERT J. BRYAN
6 United States District Judge
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24